87-445

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1987

RONALD J. ALLISON

Petitioner,

v.

KEITH HAMILTON

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Ronald J. Allison
320 North 1st Ave. West
Forsyth, MT 59327
(No Phone)

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QUESTIONS PRESENTED

Did the Ninth Circuit Court of Appeals err in its decision that the Internal Revenue Service had jurisdiction over the petitioner thus failing to order remand of Petitioner's case to a court of competent jurisdiction, grant injunctive relief to Petitioner, and wrongfully invoke the Anti-Injunction Act?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

A writ of certiorari is respectfully sought to review the Court of Appeals order Affirming the order of the lower court entered on July 16, 1987 by the Ninth Circuit Court of Appeals.

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LIST OF PARTIES

The Parties to this action are:

Petitioner/Plaintiff

RONALD J. ALLISON
320 North 1st Ave. West
Forsyth, MT 59327

Respondent/Defendant

COMMISSIONER OF THE INTERNAL REVENUE

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KEITH HAMILTON

TABLE OF AUTHORITIES

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

OPINION BELOW

The opinion below by District Court denied Petitioner's TRO request and motion to dismiss on August 23, 1985. On October 9, 1985, the District Court granted respondent's motion for summary judgment based on res judicata due to a previously filed suit by Petitioner. The Ninth Circuit Court of Appeals Affirmed the lower court's decision, on other grounds, on July 16, 1987.

JURISDICTION

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on July 16, 1987. No Motion for Rehearing was filed. The Supreme Court's jurisdiction is invoked pursuant to 28 United States Code Section 1254 (1).

BASIS OF FEDERAL JURISDICTION

Plaintiff contests, but the United States Court of Appeals for the Ninth Circuit had jurisdiction over this case by virtue of 28 United States Code Section 1291.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1987

RONALD J. ALLISON

Petitioner,

v.

KEITH HAMILTON

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Ronald J. Allison
320 North 1st Ave. West
Forsyth, MT 59327
(406) 356-2904

STATEMENT OF THE CASE

In 1982, Ronald Allison filed a W-4 with his employer, Bechtel Power Corporation ("Bechtel"), stating that he was exempt from withholding for federal income taxes. The IRS determined that Allison's form was incorrect and that Bechtel should be directed to withhold tax as if Allison were single and claiming one withholding allowance. The IRS sent letters to Bechtel and Allison informing them of this determination, listing Keith Hamilton as the "person to contact."

Allison sued the IRS in district court, contesting the IRS's authority to alter his W-4 form. The court granted the IRS's motion for summary judgment on September 24, 1984.

Allison then filed a complaint against Hamilton personally in Montana state court. In January 1985, Hamilton successfully petitioned for

removal of the case to the United States District Court for the District of Montana. In the district court, Allison sought dismissal of the case and imposition of a temporary restraining order ("TRO") to enjoin Hamilton from taking any action to collect taxes from him. Hamilton sought a summary judgment.

On August 23, 1985, the district court denied Allison's TRO request and motion to dismiss. On October 9, 1985, the district court granted Hamilton's motion for summary judgment. The court held that Allison's earlier case was res judicata and thus barred resolution of the instant case against Hamilton.

Allison timely appealed and the Ninth Circuit Court of Appeals Affirmed the lower court's decision holding removal from state court was proper, the Anti-Injunction Act barred Allison's request for a TRO, and that Allison's claim that he

is not subject to the jurisdiction of the IRS was meritless despite the fact that he had revoked his Social Security Card (insurance contract). No Petition for Rehearing was filed and Allison was charged with a Bill of Costs and Sanctions.

REASONS FOR REVIEW

1. The Ninth Circuit has rendered a decision which conflicts with decisions of other circuits.

2. The Ninth Circuit has determined a Federal question in such a way as to conflict with applicable decisions of this Court.

3. The outcome of this case will and does affect all natural, sovereign, individuals which potentially number in the millions.

ARGUMENT

The Respondent/Government's position with regard to Petitioner/Plaintiff's position begins and then deviates immediately one from the other. Simply stated the Petitioner argues that the Internal Revenue Service has no jurisdiction over himself, whereas, the government argues, and the Federal Court's have thus far agreed, that the Internal Revenue Service does have jurisdiction

over the Petitioner (App.pp A2-A3)

From this difference in position and error on the part of the Court of Appeals went on to determine that removal of this cause from State Court to Federal Court was proper in that the individually named Defendant, Keith Hamilton, an IRS employee, not only was within the ambit of his authority as a federal officer but his acts were actually sanctioned by the !RS (App. p. A4)

Once the decision was made that the IRS had jurisdiction over the Petitioner the Court went on to deny Petitioner's requested injunctive relief (TRO) based on the Anti-Injunction Act, 26 U.S.C., Section 7421 (a) claiming, "there are no exceptions to this prohibition." (App. p. A5)

In discussing whether or not summary judgment in favor of the Respondent was appropriate the Appeals Court pointed out that District Court based their decision that summary

judgment was proper on the principle of Res Judicata. The Appeals Court then went on to state that Res Judicata not withstanding that Petitioner's position that the IRS has no jurisdiction is without basis and that Petitioner's claim that he is not subject to such jurisdiction because he has revoked his Social Security Card (insurance contract) is of no importance. The Appeals Court relied on United States v. Lee, 455 U.S. 252, 261, N12 (1982) in reaching this conclusion, but Lee, Supra, is distinguishable from the present cause. In Lee, Supra, the Court held simply that a valid Social Security contract could not be revoked simply on religious grounds. (App. pp. A7) That Case did not involve the revoking of one's Social Security card for the purpose of canceling a fraudulantly obtained insurance contract in order to obtain Natural Status.

From beginning to end the Petitioner has

challenged the IRS jurisdiction over himself. (Appendix as a whole).

Basically the Courts have noted that the Sixteenth Amendment created no new taxing authority for the Federal government, consequently, the taxes collected under the 16th Amendment are of the 'indirect/excise' type of tax under the Corporation Excise Tax of 1909 (36 Stat. 12) and the Federal Employees Salary Tax of 1939. Because this is so, there is absolutely no way that a wage earner or a self-employed individual, performing services in the "Private" sector, is able to shift the burden of this "indirect/excise" income type tax onto someone else. Therefore, there is NO LEGAL COMPULSION to pay them. The Internal Revenue Code is written is such a form and manner to give the "indirect/excise" income type tax the appearance of being "Mandatory"

and giving the Internal Revenue Service so-called "enforcement" powers, but in reality this not the case. In fact, such authority or enforcement powers do not exist regarding the aforementioned individual.

Furthermore, Petitioner's research reveals that the only arguable source of authority for jurisdiction in the IRS would be under the admiralty maritime jurisdiction rules and regulations at 26 I.R.C. 7421(a). Since this is a rule, and not a law, it cannot be used to create jurisdiction where jurisdiction does not otherwise exist. The Executive Administrative Agencies in Admiralty Chancery have no jurisdiction over Sovereign Freemen Merchant/Traders At Law Absent a Contract, having to do with 26 U.S.C., and this institution of Religion cannot be imposed upon those of STATUS in violation of First Amendment protected Rights. See, Hale v.

Henkel, 201 U.S. 431.

The Petitioner has undeniably revoked the contractual obligations resulting from the issuance and acceptance of a Social Security card. Petitioner was perfectly within his rights to do as said contract is in the nature of an adhesion contract and so, Null and Void at Petitioner's request as well as having been obtained by fraud due to a deliberately false and misleading IRS Privacy Act Notice, Lee, Supra, not withstanding as previously distinguished. Petitioner reminds the Court that at a minimum that once jurisdiction is challenged it must be proven.

> "Once jurisdiction is challenged it must be proven."

Hasens v. Levine, 415 U.S. 533, Note 3.

and,

> "mere good faith assertions of power and authority (jurisdiction) have been abolished"

Owens v. City of Independence, 445 U.S. 622 (1980)

There is and was NO jurisdiction over the Petitioner.

It is equally clear that, since the Internal Revenue Code itself has not been adopted into positive law, that code cannot confer jurisdiction directly on the Internal Revenue Service. This can be confirmed by looking at the cover of Title 26 of the United States Code Annotated which contains a list of those acts which have been adopted into positive law, and Title 26, is not included in that list. Therefore, Title 26 is not positive law, and only those persons who contractually consent to be bound by it are so regulated. The situation is identical with Title 42 of the United States Code in this regard, so that code can also not confer any jurisdiction over an individual.

Since there was no jurisdiction over the Petitioner, in this cause, removal of this action from state to federal Court was in error. The federal courts are courts are courts of limited jurisdiction, and only have authority to proceed in a case on removal when they originally have jurisdiction over the action. 28 U.S.C., Section 1441(a). Article 3, Section 2, of the United States Constitution limits the power of the federal government to:

> "All Cases in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties, shall be made, under their authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;-- to all Cases of admiralty and maritime Jurisdiction;-- to Controversies to which the United States shall be a Party;-- to Controversies between two or more States; --between a State and Citizens of another State;--between Citizens of different States;-- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Obviously, the above criteria have not

been satisfied. And the United States is not a party to this action, it does not affect ambassadors or other public ministers or consuls and, because of the revocation of Plaintiff's social security card, does not arise under admiralty or maritime jurisdiction. Different states are not involved in this action and there is not diversity of citizenship between the parties, nor is there a question regarding land grants of different states or foreign states, citizens or subjects. The mere fact that a person who is a Defendant in an action is a government employee does not give the federal court jurisdiction over dispute. Law of Federal Courts, Charles Allen Wright, 1963.

There is also a statutory requirement, under 28 U.S.C. Section 1332(a) that the amount and controversy must exceed TEN THOUSAND DOLLARS ($10,000.00), and the original complaint

in this action seeks damages in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS ($3,000.00), which is obviously less than the required minimum jurisdictional amount.

It appears to the Plaintiff that the Defendant is asserting federal question jurisdiction, which is the only federal jurisdiction existing aside from diversity jurisdiction. Pan American Petroleum Corp. v. Superior Court of Delaware, 366 U.S. 656, L.ED.2d 584, 81 S.Ct. 1303. However, the complaint in this action very clearly states a cause of action under Section 70-27-108, of the Montana Code Annotated, and Section 70-27-113 of the Montana Code Annotated, both of which are very clearly State statutes since the Plaintiff is entitled to either assert or not assert a federal claim, the Defendant is not permitted to remove the claim on the basis of a federal question raised in defense of the action. Great

Northern Ry Co. v. Alexander, 38 S.Ct. 237, 246 U.S. 276, 62 L.ED. 713 (1918); LA Chemise Lacoste v. Alligator Co., 506 F.2d 339 (C.AP.3d, 1974). In other words, neither the court nor the Defendant is empowered to formulate legal theories on the part of the Plaintiff and utilize those theories as a basis for obtaining jurisdiction for the federal Court system.

Finally, the United States Supreme Court has also recognized exceptions to the Act. In Miller v. Standard Nut Margarine Co., 284 U.S. 498, the Court authorized an injunction where the exaction of the tax was illegal and because certain exceptional and extraordinary circumstances in the IRS's enforcement against the taxpayer was arbitrary and oppressive. In Enochs v. Williams Packing and Navigation Co., 370 U.S. 1, the Supreme Court again recognized an exception to the Tax Injunction Act where the

taxpayer demonstrates that: (1) under no circumstance can the governmental defendant ultimately prevail; and (2) the taxpayer will be irreparably harmed if the injunction is not granted.

The 6th Circuit Court of Appeals has also stated:

> The cited authorities agree that injunctive relief may be granted where there has been an illegal or unconstitutional levy, coupled with other special and extraordinary circumstances which would require equity to intervene.

Lassoff v. Gray, 266 F.2d 745, 747 (1959). See also, Am. Jur. 2nd, Inj. Vol. 42 Sections 178, 180, 187-190.

CONCLUSION

For the foregoing reasons, this Court should grant this Petition for Writ of Certiorari.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD J. ALLISON,	)	
	)	
Plaintiff/Appellant	)	No. 85-4265
	)	
	)	D.C. No. CV 85-19-BLG
vs.	)	
	)	
	)	
KEITH HAMILTON,	)	
	)	MEMORANDUM*
Defendant/Appellee	)	
_____	)	

Appeal from the United States District Court
for the District of Montana
The Honorable James F. Battin, District Judge,
Presiding

Submitted April 28, 1987**

Before: CHOY, FARRIS and HALL, Circuit Judges.

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* This disposition is not appropriate for publication and may
not be cited to or by the courts of this circuit except as
provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision
without oral argument. Fed. R. App. P. 34(a) and 9th Cir. R. 34-4.

Ronald Allison appeals pro se the district court's decision in favor of Keith Hamilton, an agent of the Internal Revenue Service ("IRS"). Allison contends that: (1) the IRS has no jurisdiction over him and therefore should be enjoined from altering a W-4 form submitted by Allison to his employer; (2) his case was improperly removed from state court to federal district court. We affirm the decision of the district court.

BACKGROUND

In 1982, Ronald Allison filed a W-4 form with his employer, Bechtel Power Corporation ("Bechtel"), stating that he was exempt from withholding for federal income taxes. The IRS determined that Allison's form was incorrect and that Bechtel should be directed to withhold tax as if Allison were single and claiming one withholding allowance. The IRS sent letters to Bechtel and Allison informing them of this

determination, listing Keith Hamilton as the "person to contact."

Allison sued the IRS in district court, contesting the IRS's authority to alter his W-4 form. The court granted the IRS's motion for summary judgment on September 24, 1984.

Allison then filed a complaint against Hamilton personally in a Montana state court. In January 1985, Hamilton successfully petitioned for removal of the case to the United States District Court for the District of Montana. In the district court, Allison sought dismissal of the case and imposition of a temporary restraining.order ("TRO") to enjoin Hamilton from taking any action to collect taxes from him. Hamilton sought a summary judgment.

On August 23, 1985, the district court denied Allison's TRO request and motion to dismiss. On October 9, 1985, the district court granted

Hamilton's motion for summary judgment. The court held that Allison's earlier case was res judicata and thus barred resolution of the instant case against Hamilton.

Allison timely appeals.

DISCUSSION

I. Removal

Allison contends that removal of this case from state court to federal district court was improper. We review this issue de novo. Gould v. Mutual Life Insurance Co., 790 F.2d 769, 771 (9th Cir.), cert. denied, 107 S. Ct. 580 (1986).

The removal statute implicated in this case, 28 U.S.C. § 1442(a)(1), allows federal officers to remove prosecutions based on acts done "under color of" their federal authority. See Cook v. Peter Kiewit Sons Co., 775 F.2d 1030, 1034 (9th Cir. 1985), cert. denied, 106 S. Ct. 2919 (1986). Hamilton's involvement as a "person to contact"

in the attempt by the IRS to alter Allison's withholding form was obviously sanctioned by the IRS, and was clearly within the ambit of Hamilton's authority as a federal officer. See Palermo v. Rorex, 806 F.2d 1266, 1269 (5th Cir. 1987); Greenspun v. Schlindwein, 574 F. Supp. 1038, 1040-41 (E.D. Pa. 1983). Thus, removal was appropriate under 28 U.S.C. § 1442(a)(l). See Palermo, 806 F.2d at 1269-70.

II. TRO Request

The district court correctly denied Allison's TRO request. The "Anti-Injunction Act," 26 U.S.C. + 7421(a), states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." There are exceptions to this prohibition. See id.; Bob Jones University v. Simon, 416 U.S. 725, 736-37 (1974). However, because Allison has not

demonstrated that any of the exceptions apply to this case, the district court lacked subject matter jurisdiction over Allison's TRO request. See Shannon v. United States, 521 F.2d 56, 58 (9th Cir. 1975), cert. denied, 424 U.S. 965 (1976).

III. Summary Judgment

We review de novo the district court's grant of Hamilton's motion for summary judgment. Darring v. Kincheloe, 783 F.2d 874, 876 (9th Cir. 1986). We may affirm on any ground in the record. Islamic Republic of Iran v. Boeing Co., 771 F.2d 1279, 1288 (9th Cir. 1985), cert. dismissed, 107 S. Ct. 450 (1986).

The district court ruled in favor of Hamilton on the ground of res judicata, finding that Allison's first suit against the IRS barred this action. We express no opinion on the res judicata issue; rather, we will address the arguments presented in Allison's brief

on appeal, all of which are without merit.

Allison's argument that the IRS has no jurisdiction over him has no basis. See U.S. Const. art. I, § 8; 26 U.S.C. § 6201; see also Uhrig v. Regan, 623 F. Supp. 968, 972 (D. Md. 1985). In addition, there is no basis to Allison's claim that he is not subject to IRS jurisdiction because he has revoked his Social Security Card. See United States v. Lee, 455 U.S. 252, 261 & n.12 (1982).

Allison also contends that the Internal Revenue Code is inapplicable to him because Congress never enacted Title 26 of the United States Code into positive law. This contention is frivolous. Ryan v. Bilby, 764 F.2d 1325, 1327-28 (9th Cir. 1985).

In sum, the IRS had the authority to direct Bechtel to alter Allison's W-4 withholding.

CONCLUSION

Because Allison's arguments are utterly without merit, we characterize this appeal as frivolous. See Nunlev v. Commissioner, 758 F.2d 372, 373 (9th Cir. 1985). The court of appeals may assess damages for frivolous appeals pursuant to Fed. R. App. P. 38. We conclude that the Commissioner of the IRS is entitled to double costs and $1500 in attorney's fees. See Smith v. Commissioner, 800 F.2d 930, 936 (9th Cir. 1986).

AFFIRMED.

Date	NR.	ALLISON vs. HAMILTON 85-19-BLG
-22-85	1	Filed Civil Cover Sheet.
-22-85	2	Filed Notice of Removal.
-22-85	3	Filed Petition for Removal w/cpy of sms & complaint atchd.
-28-85	4	Fild Rosebud County's crt file consisting of : Summons w/ret at'd...servd Keith Hamilton, IRS on 1-17-85; Orig Complaint.
-11-85	5	Filed Deft's ANSWER w/cert. of serv. att'd.
-14-85	6	Filed ORDER setting PPT conf for 4-17-85 at 9:00 a.m. in Blgs. Cpys sent to co. of rec.
-26-85	7	Fild Deft.'s Amended Answer, w/Crt. Srv. tm.
-17-85	8	Filed (Me+o. of Prel. Pretrial Conf. held 4-17-85) & ORDER: 1) That trial of the case commence before the Crt, sitting

w/out a jury in Blgs, MT on Mon., Dec. 16, 1985 at 9:30 a.m. as the 3rd case on that day; 2) That counsel appear before the Crt, in Chambers at Blgs, M on Nov. 27, 1985, at 9:30 a.m. for a final pretrial conf. (counsel should be prepared to discuss settlement possitilities); 3} That the final pretrial order be filed on or before Nov. 27, 1985; no new party may be joined, or the pleadings amended, after the preceding date except by leave of Crt for good cause shown. 4) That if a jury panel is to be called, counsel must confirm the need for a jury panel by giving notice to the Clerk of Crt - NA; 5) That all mots., incl. mots. in limine & mots. for summary judgment (incl partial SJ) be filed on or before Oct.

21, 1985, for oral argument no later than Nov. 14, 1985. 6) That all disc. be completed by Oct. 15, 1985. A duty to supple. disc. beyond the preceding date may be imposed by Rule 26(e), Fed.R.Cv.P.; 8) That counsel each file w/the Crt on Sept. 3, 1985, a written report indic. the status of a) disc. that has been completed, b) interrs. to be answered, c) depos. to be taken, d) expert witnesses who will be called, & e) any problems antic. in the disc. process; & 9) That counsel for pltf. conv. an attys' conf. the wk of Nov. 18, 1985 for the purpose of completing the final pretrial order in the form prescribed; NOTE: A continuance of any deadline does NOT extend any unspecified deadline. Copy ack. by

USA, Blgs; copies mailed to plaintiff & Dept. of Justice, DC.

-24-85 9 Filed Pltf's Motion for Leave to Dismiss or to Amend Complaint w/crt of svc.

-24-85 10 Filed Pltf's Brf in Sup of Mot. to Dismiss and Motion for TRO w/crt of svc.

-24-85 11 Filed Pltf's Application for TRO w/crt of svc thrn.

-24-85 Lodged Proposed Amended complt w/Jury Demand. w/crt of svc thrn.

-24-85 Lodged TRO And Order To Show Cause. Delvd to JFB.

-22-85 12 Filed Deft's Oppos to Pltf's Application for TRO w/cert of svc thrn.

-10-85 13 Filed Deft's Mot for SJ, Injunctive Relief, & Atty's Fees w/attch'd Memo Supporting Mot for SJ, Inj. Relief & Atty's Fees; Declaration of Peter V. Taylor; Opposition to Pltf's Request for Leave

to Amend Complaint & Attchmt's

-19-85 14 Filed ORDER that oral argument on Pltf's Mots to Dismiss/Amend & Mot for TRO will be heard Aug. 23, 1985 at 9:30 a.m. in Crtrm I, Blgs. Cpys sent to co of rec & handed to USA.

-23-85 Ent Procs on Rec: Plt+ + cnsl for deft pres & hrg held re pltf's 's mot to dism or amend & applic for TRO. After oral argument Crt takes matters under submission.

-23-85 15 Filed Opinion & ORDER that Pltf's Mot to Dismiss/Amend is denied & Pltf's Appl. for TRO is denied. Cpys sent to co of rec & handed to USA.

-26-85 Called Pltf; Left msg that Brf in Oppos to SJ is due

3-85 16 Filed Deft's Status Report & Mot for Cont. of Disc. Deadline & Trial Date

w/cert of svc thrn.

-27-85 17 Filed ORDER that disc. dates are cont. until after Deft's Mot for SJ is determined. cpys sent to co of rec & handed to USA.

-09-85 18 Filed OPINION & ORDER that Deft's MOt for SJ is granted and pltf's case is dismissed w/prej; that Judgment is to be entered in favor of the deft & against the pltf; that Deft's mot for injunctive relief is denied; and that deft's mot for award of atty fees is denied; Cpys sent to co of rec.

-09-85 19 I Filed & Entered JUDGMENT in favor of deft & against pltf purs to above Order;

XXVI Cpys sent to co of rec.

1549

-23-85 20 Filed NOTICE OF APPEAL.

-24-85	Mailed to 9th Circuit C/A: Cert cpys of N/A,docket sheets, docket fee notification form (fee pd).Mailed to co. of rec.: Cpys of not.of appeal docket sheets, Not.to ptys in CV appeals,& in add. to aplnt; Transc. desig & order form w/cover letter.

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT MONTANA

RONALD J. ALLISON CV 85-19-BLG

v.

KEITH B. HAMILTON JAMES F. BATTIN

Jury Verdict. This action came before the Court and a Jury with the judicial officer named above presiding. The Issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that Defendant's Motion for Summary Judgment is granted and Plaintiff's case is dismissed with prejudice;

that Judgment is entered in favor of the Defendant and against the Plaintiff;

that Defendant's motion for injunctive relief is denied; and

that Defendant's motion for award of attorney fees is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

RONALD J. ALLISON,	)	
	)	CV 85-19-BLG
Plaintiff,	)	
	)	
-vs-	)	
	)	
KEITH B. HAMILTON,	)	OPINION AND ORDER
	)	
Defendant.	)	
	)	
_____	)	

Plaintiff comes to this Court pursuant to removal from the Justice Court for Rosebud County, Montana. Plaintiff alleges the defendant, an agent for the Internal Revenue Service, caused a letter to be issued requiring plaintiff's employer, Bechtel Power Corporation, to improperly alter plaintiff's W-4 form. The defendant moved for summary judgment and, for the reasons stated below, the motion is granted.

FACTS AND CONTENTIONS

Approximately twenty months prior to the commencement of this action plaintiff filed a claim against the Internal Revenue Service (IRS) based on the same event, Case No. CV-83-117-BLG. Save for substituting an agent for the IRS as defendant, the prior and present cases are in all respects identical. The IRS, like defendant here, moved for summary judgment. The plaintiff, as here, failed to file a brief opposing the motion. Consequently, the Court, pursuant to Rule 220-1 of the Local Rules of the United States District Court, District of Montana, granted the motion.

In the presen+ motion for summary judgment, the defendant contends the prior suit bars the present suit and, in order to prevent further vexacious suits, asks the Court to enjoin plaintiff from filing without the Court's permission.

The defendant also requests an award of attorney fees.

DISCUSSION

It would be a simple matter for this Court to again dismiss plaintiff's complaint pursuant to Rule 220-1 of the Local Rules for failure to timely file a response to a motion. Because plaintiff has been warned of the consequences of his inaction by virtue of the suit against the IRS, there is ample reason for dismissal of this case. However, in the interests of justice, in an attempt to dissuade plaintiff from continuing such practice, the Court is compelled to pass on the merits of defendant's motion.

The Court agrees the present litigation is barred by plaintiff's previous claim against the IRS. Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their

privies based on the same cause of action. Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979). Furthermore, res judicata not only precludes the relitigation of issues actually raised in the earlier suit but also bars issues that could have been raised. Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394 (1981), on remand Brown v. Federated Dept. Stores, Inc. 653 F.2d 1266.

In the instant proceedings, the summary judgment granted in favor of the IRS in Case No. CV-83-117-BLG operates as a final judgment on the merits for res judicata purposes. Ruple v. City of Vermillion, S.D., 714 F.2d 860 (8th Cir. 1983), cert. denied 104 S.Ct. 1290. A review of plaintiff's complaints in the prior and present suits clearly establishes the identity of claims. Both are based on the W-4 status change. Thus, the elements of same claim and prior judgment are satisfied. The finding of privity, however, requires greater

inspection.

Initially, there is some authority holding an employee is in privity with his employer. Spector v. El Ranco, Inc., 263 F.2d 143 (9th Cir. 1959). Yet the Court feels the finding of privity is more directly compelled by the provisions of 26 U.S.C. §7422(c) which states:

> Sec. 7422. CIVIL ACTIONS FOR REFUND
>
> . . .
>
> (c) Suits Against Collection Officer a Bar – A suit against any orricer or employee of the United States . . . for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected . . . shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court.

Though § 7422(c) ideally contemplates a lawsuit first against an agent followed by a suit against the United States or an agency thereof, the point of the statute is wholly applicable in the instant case. The statute clearly establishes that, in tax

protest cases, the United States, it agencies, and its agents are to be treated as one for res judicata purposes. As such, the IRS and the defendant are in privity.

Even to discount the strength of § 7422(c), the Court is still compelled to find privity. For res judicata privity purposes, the closeness or significance of the relationship between successive defendants is the controlling factor. Gambocz v. Yelensics, 468 F.2d 837 (3rd Cir. 1972). In this case, the question of a liability-creating act does not turn on whether tne IRS or an agent thereof is a defendant. In fact, plaintiff premised his earlier claim against the IRS on the basis that the IRS is liable for the acts of its agents committed in their official capacities. The heart of the claim is the change, if any, in plaintiff's W-4 status; the actor, be it the agent in specific or the IRS in general, neither diminishes nor

compliments the claim. Thus, for all intents and purposes, the IRS and the defendant are in privity. Therefore, plaintiff's claim is barred by the doctrine of res judicata and, consequently, the defendant is entitled to judgment as a matter of law.

Although the Court may constitutionally enjoin a litigant from further filing without permission, the Court concludes such action is not warranted here. Restricting access to the courts is a step that must be taken with much caution. Plaintiff now has unsuccessfully sued the IRS and an agent; the principles of res judicata should persuade plaintiff to avoid repetitious litigation. See Harrelson v. United States, 613 F.2d 114 (5th Cir. 1980). As such, an injunction is not necessary.

Finding the circumstances insufficient to warrant imposition of attorney's+ fee, the Court

will not grant the motion requesting the award. Therefore,

IT IS ORDERED that defendant's motion for summary judgment is granted and plaintiff's case is dismissed with prejudice.

The Clerk is directed to enter judgment in favor of the defendant and against the plaintiff.

IT IS FURTHER ORDERED that defendant's motion for injunctive relief is denied.

IT IS FURTHER ORDERED that defendant's motion for award of attorney fees is denied.

The Clerk is directed forthwith to notify counsel for the respective parties of the making of this order.

Done and dated this 9th day of October, 1985.

James F. Battin
Chief Judge

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT MONTANA

RONALD J. ALLISON CV 83-117-BLG

v.

KEITH B. HAMILTON JAMES F. BATTIN

Jury Verdict. This action came before the Court and a Jury with the judicial officer named above presiding. The Issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

JUDGEMENT IS ENTERED IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFF

George T. Radovich
Attorney For Plaintiffs
P.O. Box 50190
Billings,, MT 59105

IN THE UNITED STATES DICTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

RONALD J. ALLISON, Plaintiff, -vs- INTERNAL REVENUE SERVICE, Defendant.	CAUSE NO. CV83-117-BLG COMPLAINT

COMES NOW the Plaintiff and, for his claim for relief against the Defendannt, complains and alleges as follows:

COUNT ONE

I.

That this action arises directly under the Constitution of the United States, and under Title

26, Section 6851 USC, and under Title 26, Section 6861 USC, and under Title 42 USC Sections 1981, 1983 and 1985.

II.

That the Plaintiff resides in the state of Montana, County of Rosebud.

III.

That the Defendant, the INTERNAL REVENUE SERVICE, is responsible for the acts of its agents alleged herein.

IV.

That, on or about the 14th day of September, 1982, the Defendant, by and through its agent, R. S. WINTRODE, JR., issued a letter to the Plaintiff notifying the Plaintiff that said Plaintiff's W-4 was being changed to "Single and claiming one withholding allowances", a copy of which is appended hereto as Exhibit "A" and fully incorporated herein by this refference, and that

said agent further notified the Plaintiff's employer, BECKTEL POWER CORP., to mmake the same alteration to the W-4 on file with said employer, a copy of said notice being appended hereto as Exhibit "B" and fully incorporated herein by this reference.

V.

That the alteration off the W-4 alleged herein is a violation of the Plaintiff's right to Due Process, Right to Privacy, Fifth Amendment right not to be forced to incriminate himself and his right of Free Association under the First Amendment to the United States Constitution.

VI.

That the Alteration of the Plaintiff's W-4 alleged herein was done arbitrarily and for the sole purpose of harassing and intimidating the Plaintiff through depriving him of his right as alleged herein and that, notwithstanding the decision in

Stonecipher v. Bray, 653 Fed. 2d 398 (1981), the Internal Revenue Service has a good faith obligation to fairly review a W-4 in order to determine its correctnes and that only in the event of an incorrect W-4 can the Internal Revenue Service intervene further, that the Defendant is limited in its review to correcting an erroneous W-4, and has no authority to substitute one known to be incorrect, as they have done here.

COUNT TWO

VII

That, on or about the 7th day of February,, 1983, the Defendant issued a Statement of Adjustment to Account, a copy of which is appended hereto as Exhibit "B" and fully incorporated herein by this reference.

VIII.

That said Statement of Adjustment has

arbitrarily assessed the sum of FIVE HUNDRED DOLLARS ($500.00) against the Plaintiff, but failed to provide any information justifying the penalty assessed; that the defendant has failed to commply with the requirements of Due Process and the requirements of Title 26 USC, Sections 6851 and 6861.

IX.

That, by its levies for the periods ending March 17, 1983 and March 22, 1983, the Internnal Revenue Service has actually recovered the sum of FIVE HUNDRED DOLLARS ($500.00), toghether with SIX DOLLARS AND SEVENTEEN CENTS ($6.17) in interest on said sum.

X.

That the assessment is arbitrary and without basis and that, therefore, the Defendant should be forced to set aside the assessment and to refund the sums taken as alleged herein.

WHEREFORE, Plaintiff prays the court as follows:

1. For an order directing the Defendant to refund the money taken by levy, as alleged herein;

2. For a declaration that the Defendant must make the findings required by 26 USC Section 6851 and 6861 in good faith and based on actual facts known to them at the time of said determination; and

3. For such other and further relief as the Court may deem just and proper.

DATED THIS 25th day of April, 1983.

GEORGE T. RADOVICH
Attorney for the Plaintiff

P.O. Box 50190
730 Main, Suite 203
Billings, MT 59105

RONALD J. ALLISON, pro se
320 lst Ave. N.
Forsyth, MT 59327
(no phone)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

RONALD J. ALLISON, Plaintiff, -vs- KEITH HAMILTON, Defendant.	)	Case No. CV 85 19 BLG
	)	APPLICATION FOR TEMPORARY RESTRAINING ORDER

COMES NOW the Plaintiff, and moves the Court to grant a temporary restraining order in this action to prevent the Defendant, either individually or as an agent of the government from taking any actions against the Plaintiff for the collection of any revenues or otherwise taking any action agains the Plaintiff because the Plaintiff has not subjected himself to the jurisdiction

of any governmental agencies, as is set forth in the Brief filed concurrently herewith.

DATED THIS 30th day of May, 1985.

RONALD J. ALLISON, pro se

320 1st Ave. N.
Forsyth, MT 59327

CERTIFICATE OF MAILING

I, RONALD J. ALLISON, hereby certify that I mailed a copy of the foregoing motion to the opposing attorney of record by depositing the same in the U.S. Mails, postage prepaid thereon.

RONALD J. ALLISON

RONALD J. ALLISON, pro se
320 Ist Ave. N.
Forsyth, MT 59327
(no phone)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

RONALD J. ALLISON, Plaintiff, -vs- KEITH HAMILTON, Defendant.	Case No. CV 85 19 BLG BRIEF IN SUPPORT OF MOTION TO DISMISS AND MOTION FOR TEMPORARY RESTRAINING ORDER

COMES NOW the Plaintiff, and respectfully submits the following brief in support of his motion to dismiss and in support of his application for a temporary restraining order:

FACTS

The Plaintiff is a resident of Forsyth, Rosebud County, Montana, and a citizen of the United

States. He has not taken any action to place himself within the jurisdiction of any governmental agencies, including this Court and all taxing authorities, and has expressly retracted any authority which may accidentally have been given to them by filing a formal renunciation. Thus, the only authority which applies is maritime law, and this Court lacks jurisdiction to hear maritime questions.

ARGUMENT

The Plaintiff is a sovereign citizen of the United States and has not subjected himself to the negative laws of the United States. His renunciation of any acts, including the obtaining of a social security card, has resulted in him not being subject to any laws of the United States except those which have been enacted into positive law. Thus, only the maritime laws are applicable, and title 42 of the United States

Code does not give the United States District Court jurisdiction over this action.

CONCLUSION

Because of the fact that the Plaintiff is not subject to the jurisdiction of this Court, not having subjected himself to its jurisdiction in any manner, the Plaintiff requests the Court to rule that it lacks jurisdiction. The Plaintiff also requests a Temporary Restraining Order to prohibit the Defendant from taking any further actions gainst the Plaintiff during this action.

Dated this 30th day of May, 1985.

RONALD J. ALLISON, pro se

320 1st Ave. N.
Forsyth, MT 59327

CERTIFICATE OF MAILING

I, RONALD J. ALLISON, hereby certify that I mailed a copy of the foregoing motion to the opposing attorney of record by depositing the same in the U.S. Mails, postage prepaid thereon.

_____
RONALD J. ALLISON

BYRON H. DUNBAR
United States Attorney

LORRAINE D. GALLINGER
Assistant United States Attorney
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PETER V. TAYLOR
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6395

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MONTANA

BILLINGS DIVISION

RONALD J. ALLISON, Plaintiff, v. KEITH B. HAMILTON, Defendant.	CIVIL NO. CV-85-19-BLG OPPOSITION TO PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER

FACTS

Plaintiff filed an Application for Temporary

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Restraining Order, dated May 30, 1985. In that Application, he asks the Court to enter an order "to prevent the Defendant, either individually or as an agent of the government from taking any actions against the Plaintiff for the collection of any revenues * * *." For the reasons discussed below, plaintiff's Application contravenes the clear prohibitions of the Anti-Injunction Act, Internal Revenue Code Section 7421(a) (26 U.S.C.).

ISSUE PRESENTED

Does plaintiff's application for a temporary restraining order seek relief prohibited by the Anti-Injunction Act?

STATUTE INVOLVED

Internal Revenue Code Section 7421(a) (26 U.S.C.).

PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) Tax.-- Except as provided in sections (which are inapplicable here), no suit for the

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purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

ARGUMENT

Plaintiff's Application for Temporary Restraining Order asks for an Order preventing defendant from "taking any actions against the Plaintiff for the collection of any revenues * * *." Defendant is an employee of the Internal Revenue Service, and any such order would be barred by the provisions of the Anti-Injunction Act, supra. It is clear, on the face of the pleadings which have been filed by the plaintiff, that what he seeks is the suspension of the withholding, by his employer, of federal taxes from his paycheck. This is evident from his repeated reference, in his complaint, to his W-4 withholding form

action, however denominated, is barred if it seeks to interfere with either the assessment or collection of federal taxes. Plaintiff's Application clearly falls within the prohibition of that statute, and must, therefore, be denied.

Consequently, defendant respectfully requests that plaintiff's Application be denied.

Dated this 16th of July, 1985.

BYRON H. DUNBAR
United States Attorney

LORRAINE D. GALLINGER
AssisTant United States Attorney

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

RONALD J. ALLISON, Plaintiff, v. KEITH B. HAMILTON, Defendant.	)	CASE NO. CV-85-19-BLG AMENDED ANSWER

Defendant, by his undersigned attorneys, hereby Answers plaintiff's Complaint as follows:

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth

of Paragraph I of the Complaint, and therefore denies the same;

2. Defendant admits Paragraph II of the Complaint;

3. Defendant denies Paragraph III of the Complaint, and affirmatively alleges the defendant's acts were done in compliance with the law, in defendant's official capacity and within the scope of his duties as an officer of the Internal Revenue Service of the United States of America;

4. Denies that plaintiff has suffered damages, as alleged in Paragraph IV of the Complaint, or that plaintiff is entitled to costs or interest, as alleged in Paragraph V of the Complaint;

AFFIRMATIVE DEFENSE

1. As his first affirmative defense, defendant alleges that plaintiff failed to mitigate his

damages, if any;

2. As his second affirmative defense, defendant alleges that plaintiff's complaint fails to state a claim upon which relief can be granted;

3. As his third affirmative defense, defendant alleges that plaintiff has failed to exhaust his administrative remedies;

4. As his fourth affirmative defense, defendant alleges that the Court lacks subject matter jurisdiction over this matter;

5. As his fifth affirmative defense, defendant alleges that the Court lacks personal jurisdiction over the defendant because of insufficiency of service of process;

6. As his sixth affirmative defense, defendant alleges that plaintiff's action is barred by the doctrine of sovereign immunity;

7. As his seventh affirmative defense, defendant alleges that plaintiff's action is barred

by the Anti-Injunction Act;

8. As his eighth affirmative defense, defendant alleges that plaintiff's action is barred by res judicata.

WHEREFORE, defendant demands that plaintiff's complaint be dismissed with prejudice, and that defendant be awarded costs, including reasonable attorneys' fees, and such other relief as the Court deems proper.

Dated this 22nd day of February, 1985.

BYRON H. DUNBAR
United States Attorney

LORRAINE GALLINGER
Assistant United States Attorney

PETER V. TAYLOR
Trial Attorney, Tax Division
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

RONALD J. ALLISON, Plaintiff,	)	
v.	)	CASE NO. CV-85-19-BLG
KEITH B. HAMILTON, Defendant.	)	ANSWER

Defendant, by his attorneys, the United States Department of Justice, hereby Answers plaintiff's Complaint as follows:

1. Defendant lacks knowledge or

information sufficient to form a belief as to the truth of Paragraph I of the Complaint, and therefore denies the same;

2. Defendant admits Paragraph II of the Complaint;

3. Defendant denies Paragraph III of the Complaint, and affirmatively alleges the defendant's acts were done in compliance with the law, in defendant's official capacity and within the scope of his duties as an officer of the Internal Revenue Service of the United States of America;

4. Denies that plaintiff has suffered damages, as alleged in Paragraph IV of the Complaint, or that plaintiff is entitled to costs or interest, as alleged in Paragraph V of the Complaint;

AFFIRMATIVE DEFENSE

1. As its first affirmative defense, alleges that plaintiff failed to mitigate his damages, if any;

2. As its second affirmative defense, defendant alleges that plaintiff's complaint fails to state a claim upon which relief can be granted;

3. As its third affirmative defense, defendant alleges that plaintiff has failed+to exhaust his administrative remedies;

4. As its fourth affirmative defense, defendant alleges that the Court lacks subject matter jurisdiction over this matter;

5. As its fifth affirmative defense, defendant alleges that the Court lacks personal jurisdiction over the defendant because of insufficiency of service of process;

6. As its sixth affirmative defense, defendant alleges that plaintiff's action is barred by the doctrine of sovereign immunity;

7. As its seventh affirmative defense, defendant alleges

that plaintiff's action is barred by the Anti-Injunction Act;

WHEREFORE, defendant demands that plaintiff's complaint be dismissed with prejudice, and that defendant be awarded costs, including reasonable attorney's fees, and such other relief as the Court deems proper.

Dated this 6th day of February, 1985.

PYRON H. DUNBAR
United States Attorney

LORRAINE GALLINGER
Assistant United States Attorney

PETER V. TAYLOR
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IN THE JUSTICE COURT

OF DAVID J. POLLEY , JUSTICE OF THE PEACE

ROSEBUD COUNTY, MONTANA

RONALD J. ALLISON	)	
	)	
PLAINTIFF,	)	CAUSE NO.
	)	
-Vs-	)	85C106
	)	
KEITH HAMILTON	)	
	)	
DEFENDANT,	)	
----------	)	

COMPLAINT

COMES NOW the Plaintiff and, for his claim for relief a+ainst the Defendant, complains and alleges as follows:

I.

That the Plaintiff is a resident of Rosebud County, Montana, and that all of the acts complained of herein occurred in Rosebud County, Montana.

II.

That, on or about the 14th day of Sep+ember, 1982, the Defendant caused to be issued a letter requiring BECHTEL POWER CORP. to alter the W-4 form of the Plaintiff to change the exemption status to Single and claiming one withholding allowance."

III.

That, at the time of said letter, the Defendant was aware that this was not the proper status and that the Defendant was without authority to alter said W-4 as specified herein.

IV.

That, as a direct and proximate result of the actions of the Defendant alleged herein, the Plaintiff has been deprived of funds in excess of THREE THOUSAND FIVE HUNDRED DOLLARS. ($3,500.00), which said sum he is entitled to recover from the Defendant, and that the Plaintiff

waives his damages in excess of the jurisdictional limit of this court.

V.

That the Plaintiff is entitled to recover his costs in this action, and interest on his judgment at the rate of TEN PERCENT (10%) from the date of its entry.

WHEREFDRE, Plaintiff prays the Court as follows:

1. For a judgement against the Defendant in the amount of THREE THOUSAND FIVE HUNDRED DDLLARS ($3500.00), together with the Plaintiff's costs necessarily incurred herein and interest on the judgment in the amount of TEN PERCENT (10%) per annum until paid: and

2. For such other and further suitable relief as the Court may deem just and proper.

DATED THIS 14th day of JANUARY , 1985.

RONALD J. ALLISON
Plaintiff
320 North 1st Ave. West
Box 661
Forsyth, MT 59327